

1 ROBERT W. FERGUSON  
2 *Attorney General*

3 JEFFREY T. SPRUNG, WSBA #23607  
4 R. JULY SIMPSON, WSBA #45869  
5 SPENCER W. COATES, WSBA #49683  
6 PAUL M. CRISALLI, WSBA #40681  
Assistant Attorneys General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF WASHINGTON**  
**AT SPOKANE**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 MIGUEL CARDONA, in his official  
13 capacity as Acting Secretary of the  
14 United States Department of  
15 Education, and the UNITED STATES  
16 DEPARTMENT OF EDUCATION, a  
federal agency,

Defendants.

NO. 2:20-cv-00182-TOR

**STIPULATED DISMISSAL  
WITHOUT PREJUDICE OF  
FIRST AMENDED  
COMPLAINT**

17 Plaintiff State of Washington filed a complaint and motion for preliminary  
18 injunction in this action on May 19, 2020, (ECF Nos. 1 and 5) challenging  
19 Defendants' imposition of eligibility restrictions on COVID-19 emergency  
20 assistance grants for students under the Higher Education Emergency Relief  
21 Funds Program (HEERF) enacted under the Coronavirus Aid, Relief and  
22 Economic Security (CARES) Act of March 27, 2020. Defendants' eligibility

1 restrictions first appeared on April 21, 2020, in guidance that prohibited  
2 institutions of higher education from disbursing HEERF grants to students unless  
3 they were eligible for federal financial aid under title IV of the Higher Education  
4 Act of 1965 (Title IV). On June 17, 2020, Defendants published an Interim Final  
5 Rule (IFR) that incorporated Defendants' Title IV restrictions on student  
6 eligibility for HEERF grants and also stated that restrictions on the disbursement  
7 of "federal financial aid" to certain noncitizens under 8 U.S.C. § 1611  
8 (Section 1611) applied to HEERF grants.

9 On June 12, 2020, this Court issued a preliminary injunction (ECF No. 31)  
10 prohibiting Defendants from implementing or enforcing the provisions of the  
11 April 21, 2020, guidance and the IFR that restricts the discretion of higher  
12 institutions in the State of Washington to determine which students will receive  
13 CARES Act student emergency financial assistance grants. The Order did not lift  
14 the restrictions of Section 1611, and in an Order on a subsequent motion for  
15 partial summary judgment, the Court declined to lift those restrictions (ECF  
16 No. 63). On September 18, 2020, Plaintiffs filed a First Amended Complaint  
17 (ECF No. 69) to incorporate a challenge to Defendants' IFR as *ultra vires* and as  
18 violating separation of powers' principles, the Spending Clause, and the  
19 Administrative Procedure Act.

1 On May 14, 2021, Defendants published in the Federal Register a  
2 Final Rule, 86 Fed. Reg. 26608, in which they rescinded the IFR's Title IV and  
3 Section 1611 eligibility restrictions on HEERF grants to students and amended  
4 applicable regulations to provide that eligible institutions of higher education  
5 could disburse HEERF grants to any enrolled student.

6 THEREFORE, the PARTIES, through their undersigned attorneys,  
7 HEREBY STIPULATE AND AGREE as follows:

- 8 1. The above-captioned action is dismissed without prejudice pursuant  
9 to Federal Rule of Civil Procedure 41(a)(1)(A)(ii); and  
10 2. All parties will bear their own fees and costs.

11 RESPECTFULLY SUBMITTED this 21 day of June 2021.

12 ROBERT W. FERGUSON  
13 Attorney General of Washington

14 /s/ R. July Simpson

15 JEFFREY T. SPRUNG, WSBA #23607  
16 R. JULY SIMPSON, WSBA #45869  
17 SPENCER W. COATES, WSBA #49683  
18 PAUL M. CRISALLI, WSBA #40681  
19 Assistant Attorneys General  
20 800 Fifth Avenue, Suite 2000  
21 Seattle, WA 98104-3188  
22 (206) 464-7744  
jeff.sprung@atg.wa.gov  
july.simpson@atg.wa.gov  
spencer.coates@atg.wa.gov  
paul.crisalli@atg.wa.gov

*Attorneys for Plaintiff State of Washington*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

BRIAN M. BOYNTON  
Acting Assistant Attorney General  
MARCIA BERMAN  
Assistant Director, Federal Programs Branch

/s/ Alexander V. Sverdlov  
ALEXANDER V. SVERDLOV  
(New York Bar No. 4918793)  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street NW  
Washington, DC 20005  
Tel. (202) 305-8550  
alexander.v.sverdlov@usdoj.gov

*Attorneys for Defendants*

**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 21 day of June 2021 at Tacoma, Washington.

/s/ R. July Simpson  
R. JULY SIMPSON, WSBA #45869  
Assistant Attorney General